

WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166
(212) 294-6700
James S. Richter

*Attorneys for Defendants Gadi Cohen and
PNY Technologies, Inc.*

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MARK BERRADA; : X
Plaintiffs, :
: Honorable Susan D. Wigenton
: Civil Action No. 16 CV 574 (SDW) (LDW)
: :
v. :
: DECLARATION OF JAMES S. RICHTER
GADI COHEN and PNY TECHNOLOGIES,: IN SUPPORT OF DEFENDANTS'
INC., a Delaware corporation; : MOTION FOR SUMMARY JUDGMENT
: :
Defendants. :
: Return date: April 16, 2018
: :
X

JAMES S. RICHTER, of full age, hereby declares as follows:

1. I am an attorney at law of the State of New Jersey and a partner with Winston & Strawn LLP, attorneys for Defendants Gadi Cohen (“Cohen”) and PNY Technologies, Inc. (“PNY,” together with Cohen, “Defendants”) in the above-captioned action. As such, I have personal knowledge of the facts set forth herein.
2. This Declaration is submitted in support of Defendants’ Motion for Summary Judgment.
3. Attached hereto as Exhibit 1 is a true and correct copy of the *Amended Complaint*, dated April 26, 2017 (ECF No. 187).

4. Attached hereto as Exhibit 2 is a true and correct copy of the *Answer, Affirmative Defenses, and Counterclaims of Defendants Gadi Cohen and PNY Technologies, Inc.*, dated May 10, 2017 (ECF No. 190).

5. Attached hereto as Exhibit 3 is a true and correct copy of the resume of Mark Berrada, bearing Bates numbers BERRADA 00162 – 00164 (this document was also marked as Defendants' Deposition Exhibit 1, bearing Bates numbers PNY-0002166 – PNY-0002168).

6. Attached hereto as Exhibit 4 true and correct excerpts from the December 16, 2016, June 1, 2017, and August 22, 2017 deposition transcripts of Mark Berrada (FILED UNDER SEAL).

7. Attached hereto as Exhibit 5 is a true and correct copy of the publicly-available decision in *Martin-Berrada v. Berrada*, Docket No. V-5074/6-07 (N.Y. Fam. Ct. Dec. 8, 2008), bearing Bates numbers PNY-0068045 – PNY-0068116.

8. Attached hereto as Exhibit 6 is a true and correct copy of the publicly-available *Garnishee Office Depot, Inc.'s Answer to Writ of Garnishment, Martin-Berrada v. Berrada*, Case No. 502012DR000792 (Fla. Cir. Ct. Oct. 17, 2014).

9. Attached hereto as Exhibit 7 is a true and correct copy of a July 7-17, 2013 email chain between M. Berrada and R. Graves, bearing Bates numbers BERRADA 00191 – BERRADA 00194 (FILED UNDER SEAL).

10. Attached hereto as Exhibit 8 is a true and correct copy of Defendants' Deposition Exhibit 11, August 1, 2013 email from M. Berrada, bearing Bates numbers BERRADA 00197 – BERRADA 00198 (FILED UNDER SEAL).

11. Attached hereto as Exhibit 9 is a true and correct copy of *Plaintiff Mark Berrada's Answers to Defendant PNY Technologies, Inc.'s First Set of Interrogatories*, dated May 22, 2017 (FILED UNDER SEAL).

12. Attached hereto as Exhibit 10 is a true and correct copy of a July 7-22, 2013 email chain between M. Berrada and R. Graves, bearing Bates numbers BERRADA 00196 – BERRADA 00196E (FILED UNDER SEAL).

13. Attached hereto as Exhibit 11 is a true and correct copy of August 9, 2013 emails between M. Berrada, L. Ping, and F. Graves, bearing Bates numbers BERRADA 00206 – BERRADA 00207 (FILED UNDER SEAL).

14. Attached hereto as Exhibit 12 are true and correct copies of excerpts from the December 12, 2016 deposition transcript of Gadi Cohen (FILED UNDER SEAL).

15. Attached hereto as Exhibit 13 is a true and correct copy of a Defendants' Deposition Exhibit 6, a September 13, 2013 email from M. Berrada with attached signed nondisclosure agreement, bearing Bates numbers PNY-0072657 – PNY-0072658 (FILED UNDER SEAL).

16. Attached hereto as Exhibit 14 is a true and correct copy of Defendants' Deposition Exhibit 9, September 11-16, 2013 emails between, *inter alia*, M. Berrada and N. Mauro, bearing Bates number PNY-0072659 – PNY-0072662 (FILED UNDER SEAL).

17. Attached hereto as Exhibit 15 are true and correct copies of excerpts from the May 18, 2016 deposition transcript of Heidi Stuto.

18. Attached hereto as Exhibit 16 are true and correct copies of excerpts from the December 13, 2016 deposition of Mark Ciano (FILED UNDER SEAL).

19. Attached hereto as Exhibit 17 are true and correct copies of excerpts from the December 14, 2016 deposition of Nicholas Mauro (FILED UNDER SEAL).

20. Attached hereto as Exhibit 18 are true and correct copies of excerpts from the December 15, 2016 deposition of Suzanne Blanchette-Grigoletti.

21. Attached hereto as Exhibit 19 is a true and correct copy of the *Declaration of Mark Ciano in Support of Defendants' Rule 11 Motion*, dated October 30, 2015 (ECF No. 49-1).

22. Attached hereto as Exhibit 20 is a true and correct copy of the *Affidavit of Mark Berrada*, dated December 3, 2015 (ECF No. 51-1).

23. Attached hereto as Exhibit 21 is a true and correct copy of the *Declaration of Mark Ciano in Support of Motion to Transfer*, dated November 11, 2015 (ECF No. 34-1).

24. Attached hereto as Exhibit 22 is a true and correct copy of the invoices and checks relating to Mark Berrada's services to PNY, bearing Bates numbers PNY-0056 – PNY-0069, arranged in chronological order.

25. Attached hereto as Exhibit 23 is a true and correct copy of Defendants' Deposition Exhibit 26, Form 1099-MISC for 2013, bearing Bates number PNY-0136 (FILED UNDER SEAL).

26. Attached hereto as Exhibit 24 is a true and correct copy of Mark Berrada's Schedule C to IRS Form 1040 for the year 2013, bearing Bates number BERRADA 00229 (FILED UNDER SEAL).

27. Attached hereto as Exhibit 25 is a true and correct copy of Defendants' Deposition Exhibit 25, 1099-MISC for 2014, bearing Bates number PNY-0055 (FILED UNDER SEAL).

28. Attached hereto as Exhibit 26 is a true and correct copy of Defendants' Deposition Exhibit 28A, PNY's organizational chart (FILED UNDER SEAL).

29. Attached hereto as Exhibit 27 are true and correct copies of excerpts from the August 24, 2017 deposition of Harvey Etter (FILED UNDER SEAL).

30. Attached hereto as Exhibit 28 is a true and correct copy of a document entitled “New Product Initiative --- Weekly Key Takeaways,” bearing Bates numbers PNY-0073099 – PNY-0073117 (FILED UNDER SEAL).

31. Attached hereto as Exhibit 29 is a true and correct copy of Plaintiff’s Deposition Exhibit 17, a presentation entitled “Proposed categories October 2013” (FILED UNDER SEAL).

32. Attached hereto as Exhibit 30 is a true and correct copy of Defendants’ Deposition Exhibit 7, a PNY Mutual Confidential and Non-Disclosure Agreement, entered into on November 1, 2013, bearing Bates number PNY-0110822 (FILED UNDER SEAL).

33. Attached hereto as Exhibit 31 is a true and correct copy of emails dated November 14, 2013 between Mark Berrada and various PNY employees, bearing Bates number PNY-0002350 – PNY-0002351 (FILED UNDER SEAL).

34. Attached hereto as Exhibit 32 is a true and correct copy of a compilation of emails bearing Bates numbers PNY-0055677 – PNY-0055680, PNY-0054778 – PNY-0054786, and PNY-0081145 – PNY-0081148, arranged in chronological order (FILED UNDER SEAL).

35. Attached hereto as Exhibit 33 is a true and correct copy of Defendants’ Deposition Exhibit 8, a November 14, 2013 calendar invite sent by Mark Berrada, bearing Bates number PNY-0066152 (FILED UNDER SEAL).

36. Attached hereto as Exhibit 34 is a true and correct copy of a December 3, 2013 email and attachment sent by H. Stuto to M. Berrada, bearing Bates numbers PNY-0080936 – PNY-0080957 (this document was also marked as Plaintiff’s Deposition Exhibit 11) (FILED UNDER SEAL).¹

¹ Any reference to a deposition exhibit marked by Plaintiff without an accompanying Bates number signals it was produced without a Bates number.

37. Attached hereto as Exhibit 35 is a true and correct copy of a December 18, 2013 calendar invite sent to H. Stuto from M. Berrada, bearing Bates number PNY-0065701 (FILED UNDER SEAL).

38. Attached hereto as Exhibit 36 is a true and correct copy of February 24-28, 2014 emails between H. Stuto and M. Berrada, bearing Bates numbers PNY-0083281 – PNY-0083282 (this document was also marked as Plaintiff's Deposition Exhibit 15) (FILED UNDER SEAL).

39. Attached hereto as Exhibit 37 is a true and correct copy March 9-11, 2014 emails between H. Stuto and M. Berrada, bearing Bates number PNY-0042643 (this document was also marked as Plaintiff's Deposition Exhibit 16) (FILED UNDER SEAL).

40. Attached hereto as Exhibit 38 are true and correct copies of excerpts from the May 5, 2017 Deposition of Kelvin Kam.

41. Attached hereto as Exhibit 39 is a true and correct copy of July 11, 2014 emails between M. Berrada and S. Blanchette-Grigoletti, bearing Bates number PNY-0072623 (FILED UNDER SEAL).

42. Attached hereto as Exhibit 40 is a true and correct copy of Defendants' Deposition Exhibit 20, the Employment Application Form and Authorization to Conduct Background Check of Mark Berrada, bearing Bates numbers PNY-0110767 – PNY-00110776 (FILED UNDER SEAL).

43. Attached hereto as Exhibit 41 is a true and correct copy of a July 16, 2014 offer of employment to Mark Berrada, bearing Bates numbers PNY-0035 – PNY-0036.

44. Attached hereto as Exhibit 42 is a true and correct copy of a July 16, 2014 offer of employment to Mark Berrada with handwritten notes, bearing Bates numbers PNY-0024 – PNY-0025.

45. Attached hereto as Exhibit 43 is a true and correct copy of Defendants' Deposition Exhibit 17, a July 28, 2014 calendar invite from M. Berrada to M. Ciano, with a subject of "Offer letter & other," bearing Bates number PNY-004767.

46. Attached hereto as Exhibit 44 is a true and correct copy of a July 29, 2014 email from S. Blanchette-Grigoletti to L. Ziembra, bearing Bates number PNY-0031.

47. Attached hereto as Exhibit 45 is a true and correct copy of a July 29, 2014 email from S. Blanchette-Grigoletti to L. Ziembra with handwritten notes, bearing Bates number PNY-0020.

48. Attached hereto as Exhibit 46 is a true and correct copy of a July 29, 2014 offer of employment to Mark Berrada, bearing Bates numbers PNY-0029 – PNY-0030.

49. Attached hereto as Exhibit 47 is a true and correct copy of a July 30, 2014 offer of employment to Mark Berrada with attached existing customer list, bearing Bates numbers PNY-0026 – PNY-0028.

50. Attached hereto as Exhibit 48 is a true and correct copy of a July 30, 2014 offer of employment to Mark Berrada with handwritten notes, bearing Bates numbers PNY-0022 – PNY-0023.

51. Attached hereto as Exhibit 49 is a true and correct copy of a July 31, 2014 offer of employment to Mark Berrada with attached compensation plan and existing customer list, bearing Bates numbers PNY-0038 – PNY-0041.

52. Attached hereto as Exhibit 50 is a true and correct copy of an August 1, 2014 offer of employment to Mark Berrada with attached compensation plan and existing customer list, bearing Bates numbers PNY-0016 – PNY-0019.

53. Attached hereto as Exhibit 51 is a true and correct copy of an October 5, 2014 email from M. Ciano to M. Berrada, with a subject of “Accepted: Offer letter & Infrastructure,” bearing Bates number PNY-0001887 (FILED UNDER SEAL).

54. Attached hereto as Exhibit 52 is a true and correct copy of Defendants’ Deposition Exhibit 12A, an October 15, 2014 invoice from Mark Berrada with handwritten notes, bearing Bates number PNY-0057A.

55. Attached hereto as Exhibit 53 is a true and correct copy of an October 15, 2014 expense report from Mark Berrada and October 20, 2014 check made out to Mark Berrada, bearing Bates numbers PNY-00132 – PNY-00133.

56. Attached hereto as Exhibit 54 is a true and correct copy of October 21- November 4, 2014 emails between M. Berrada and L. Britting, bearing Bates numbers PNY-0007766 – PNY-0007767 (FILED UNDER SEAL).

57. Attached hereto as Exhibit 55 is a true and correct copy of an October 16, 2014 email from M. Berrada to T. Gomez with a subject of “Targeted List of Customers,” bearing Bates number PNY-0056667 (FILED UNDER SEAL).

58. Attached hereto as Exhibit 56 is a true and correct copy of Defendants’ Deposition Exhibit 24, an October 21, 2014 email from T. Gomez to M. Berrada, with a subject of “Mark B – Account List 10-20-14,” and accompanying attachment, bearing Bates numbers PNY-0072324 – PNY-0072325 (FILED UNDER SEAL).

59. Attached hereto as Exhibit 57 is a true and correct copy of Defendants’ Deposition Exhibit 23, October 28-30, 2014 emails between M. Berrada and H. Stuto, and attached Sales Representative Agreement, bearing Bates numbers PNY-0002 – PNY-0015.

60. Attached hereto as Exhibit 58 is a true and correct copy of a November 11, 2014 email from M. Berrada to M. Ciano, bearing Bates numbers PNY-0072883 – PNY-0072884 (this document was also marked as part of Plaintiff's Deposition Exhibit 25) (FILED UNDER SEAL).

61. Attached hereto as Exhibit 59 is a true and correct copy of a November 11, 2014 email from M. Berrada forwarded to “markberrada@hotmail.com,” bearing Bates numbers PNY-0082178 – PNY-0082179 (FILED UNDER SEAL).

62. Attached hereto as Exhibit 60 is a true and correct copy of a November 11, 2014 email from M. Berrada forwarded to “markberrada@hotmail.com,” bearing Bates number PNY-0056563 (FILED UNDER SEAL).

63. Attached hereto as Exhibit 61 is a true and correct copy of a November 12, 2014 email from M. Berrada to “markberrada@hotmail.com,” forwarding M. Ciano's acceptance of a conference call from M. Berrada, bearing Bates number PNY-0056559 (FILED UNDER SEAL).

64. Attached hereto as Exhibit 62 is a true and correct copy of a November 12, 2014 email from H. Stuto to M. Berrada, accepting a conference call invite, bearing Bates number PNY-0007742 (FILED UNDER SEAL).

65. Attached hereto as Exhibit 63 is a true and correct copy of a November 19, 2014 email from H. Stuto to M. Berrada, copying M. Ciano, with a subject of “PNY – Sales Representative Agreement – 11-19-14,” with attached Sales Representative Agreement, bearing Bates numbers PNY-0072837 – PNY-0072850.

66. Attached hereto as Exhibit 64 are true and correct copies of excerpts from the March 16, 2017 deposition of Jeffrey Olear (FILED UNDER SEAL).

67. Attached hereto as Exhibit 65 is a true and correct copy of Defendants' Deposition Exhibit 14, September 3, 2014 emails between M. Berrada and G. Cohen, bearing Bates number PNY-0000728 (FILED UNDER SEAL).

68. Attached hereto as Exhibit 66 is a true and correct copy of Defendants' Deposition Exhibit 15, a September 25, 2014 email from J. Masterson to M. Berrada and G. Cohen, bearing Bates numbers PNY-0000988 – PNY-0000991 (FILED UNDER SEAL).

69. Attached hereto as Exhibit 67 is a true and correct copy of an inventory report for PNY, bearing bates number PNY-0118032 (FILED UNDER SEAL).

70. Attached hereto as Exhibit 68 is a true and correct copy of a compilation of emails forwarded from M. Berrada ("mberrada@pny.com") to "markberrada@hotmail.com," bearing bates numbers PNY-0066249 – PNY-0066251, PNY-0065816, PNY-0065638, PNY-0065474 – PNY-0065475, PNY-0065471 – PNY-0065472, PNY-0065395 – PNY-0065397, PNY-0064830, PNY-0059612, PNY-0057285, PNY-0082225, PNY-0056611, PNY-0082193, PNY-0056565, PNY-0056566, PNY-0082178 – PNY-0082179, PNY-0056563, PNY-0056559, PNY-0082162, and PNY-0072792, arranged in chronological order (attachments omitted) (FILED UNDER SEAL).

71. Attached hereto as Exhibit 69 is a true and correct copy of an email sent from M. Berrada ("mberrada@pny.com") to "markberrada@hotmail.com," with a subject of "NACS scan – customer names & address.xlsx," bearing Bates number PNY-0082225 (attachment omitted) (FILED UNDER SEAL).

72. Attached hereto as Exhibit 70 is a true and correct copy of a compilation of sample documents downloaded by Mark Berrada (Plaintiff's Deposition Exhibits 19, 20, 21, 28, and 40) (FILED UNDER SEAL).

73. Attached hereto as Exhibit 71 is a true and correct copy of an excel file listing out the failed attempts to log in to Mr. Berrada's deactivated PNY email account, bearing Bates number PNY-0110752 (native form to be mailed to the Court).

74. Attached hereto as Exhibit 72 is a true and correct copy of *Plaintiff Mark Berrada's Response to Defendant PNY Technologies, Inc.'s Third Request for Production of Documents*, dated May 1, 2017.

75. Attached hereto as Exhibit 73 is a true and correct copy of the publicly-available *Respondent's Affidavit in Support of Motion for Order to Show Cause re: Modification / Establishment of Child Support, Martin v. Berrada*, Case No. 09-DS-0491-SF (Or. Cir. Ct. July 8, 2013), bearing Bates numbers PNY-0070523 – PNY-0070526.

76. Attached hereto as Exhibit 74 is a true and correct copy of Defendants' Deposition Exhibit 21, the publicly-available *Respondent's Hearing Memorandum, Martin v. Berrada*, Case No. 09-DS-0491-SF (Or. Cir. Ct. Mar. 4, 2014), bearing Bates numbers PNY-0071192 – PNY-0071194.

77. Attached hereto as Exhibit 75 is a true and correct copy of the publicly-available *Affidavit in Support of Motion for Order for Telephonic Testimony, Martin v. Berrada*, Case No. 09-DS-0491-SF (Or. Cir. Ct. Mar. 12, 2014), bearing Bates number PNY-0071348 – PNY-0071349.

78. Attached hereto as Exhibit 76 is a true and correct copy of the publicly-available decision in *Martin v. Berrada*, Case No. 09-DS-0491-SF (Or. Cir. Ct. Apr. 10, 2014), bearing Bates numbers PNY-0071366 – PNY-0071367.

79. Attached hereto as Exhibit 77 is a true and correct copy of the publicly-available *Respondent's Hearing Memorandum, Martin v. Berrada*, Case No. 09-DS-0491-SF (Or. Cir. Ct. June 9, 2014), bearing Bates numbers PNY-0070848 – PNY-0070853.

80. Attached hereto as Exhibit 78 is a true and correct copy of the publicly-available *Respondent's Affidavit in Objection to Petitioner's Form of the Supplemental Judgment re Child Support and Unreimbursed Expenses* dated August 3, 2014, *Martin v. Berrada*, Case No. 09-DS-0491-SF (Or. Cir. Ct. Aug. 6, 2014), bearing Bates numbers PNY-0071558 – PNY-0071570.

81. Attached hereto as Exhibit 79 is a true and correct copy of the publicly-available *Supplemental Judgment re: Child Support & Unreimbursed Expenses (Money Award)* dated August 5, 2014, *Martin v. Berrada*, Case No. 09-DS-0491-SF (Or. Cir. Ct. Aug. 6, 2014), bearing Bates numbers PNY-0071527 – PNY-0071534.

82. Attached hereto as Exhibit 80 is a true and correct copy of the publicly-available *Respondent's Affidavit in Support of Motion for Order to Show Cause re: Modification of Child Support & Child Support Expenses* dated March 20, 2015, *Martin v. Berrada*, Case No. 09-DS-0491-SF (Or. Cir. Ct. Mar. 23, 2015), bearing Bates numbers PNY-0071814 – PNY-0071820.

83. Attached hereto as Exhibit 81 is a true and correct copy of the publicly-available Psychological Evaluation of Mental Health Status, of Mark Berrada dated October 30, 2010, filed in *In the Matter of the Marriage of Teresa Martin-Berrada, NKA Teresa Martin, Petitioner-Respondent, and Mark M. Berrada, Respondent-Appellant*, Court of Appeals of the State of Oregon, Court of Appeals No. A150120, bearing Bates numbers PNY-0067691 – PNY-0067695 (FILED UNDER SEAL).

84. Attached hereto as Exhibit 82 is a true and correct copy of Plaintiff's Deposition Exhibit 73, a February 5, 2015 email between B. Varon and K. Smith (FILED UNDER SEAL).

85. Attached hereto as Exhibit 83 is a demonstrative timeline of the material events in this matter.

I hereby declare under penalty of perjury that the foregoing statements made by me are true and correct.

s/ James S. Richter

James S. Richter
jrichter@winston.com

Dated: March 20, 2018